

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

DOCKET NO. 1:09-cr-164

6 vs.

7 DERICK OLIN McCONNOR,

8 Defendant.

9 /

10
11 TRANSCRIPT OF PLEA HEARING

12 BEFORE THE HONORABLE ROBERT J. JONKER

13 UNITED STATES DISTRICT JUDGE

14 GRAND RAPIDS, MICHIGAN

15 December 22, 2009

16
17 Court Reporter: Glenda Trexler
18 Official Court Reporter
19 United States District Court
20 685 Federal Building
110 Michigan Street, N.W.
Grand Rapids, Michigan 49503

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17 * * * * *

18 Grand Rapids, Michigan

19 December 22, 2009

20 11:08 a.m.

21 P R O C E E D I N G S

22 *THE COURT:* We're here in the case of the
23 United States against Derick McConnon, 1:09-cr-164. We have an
24 anticipated change of plea today.

25 Let's start with appearances, please.

26 *MR. O'CONNOR:* Good morning, Your Honor,
27 Chris O'Connor on behalf of the United States appearing on
28 behalf of Mark Courtade.

29 *THE COURT:* All right. Thank you.

30 *MR. O'HARA:* Good morning, Your Honor, Jeff O'Hara

1 appearing with Mr. McConnon for a change-of-plea hearing.

2 *THE COURT:* All right. My notes indicate we're
3 anticipating a change of plea to Count 3, the conspiracy
4 charge, is that it?

5 *MR. O'HARA:* Correct, Your Honor.

6 *THE COURT:* Okay. Before we get started, just -- I
7 don't want to put the cart before the horse, but in terms of
8 reviewing the stipulations in the plea agreement and then in
9 the last, I think, two or three pleas we've had in conspiracy
10 claims we've gotten around to factual basis and had some issues
11 with the factual basis on agreement. Not -- I mean, they are
12 not necessarily for reasons that are framed here, but I guess
13 what I'm concerned about is I read 4 -- and I know we haven't
14 gotten to factual basis yet and it may all become clear, and
15 it's consistent with somebody who was a long-term distributor
16 but on sort of rolling transactions, if you will. You know,
17 had a regular series of buys and then a regular series of
18 sells. Are we going to have, though -- from counsel's
19 perspective are you comfortable there's factual basis
20 anticipated for a genuine agreement with at least one other
21 person that would be a conspiracy here to distribute?

22 *MR. O'HARA:* I expect --

23 *THE COURT:* I --

24 *MR. O'HARA:* I expect that, Your Honor.

25 *THE COURT:* You do?

1 MR. O'HARA: Yes.

2 THE COURT: Okay. Fair enough. Then let's get
3 started.

4 All right. Then we can get started if you want to
5 come forward. I'm sorry.

6 MR. O'HARA: Thank you, Your Honor.

7 THE COURT: Okay. Mr. McConnon, I'm sure you've had
8 a chance to talk to your lawyer about this process, but I'm
9 going to be interested in basically three things today, and the
10 first is to make sure you're in a proper frame of mind here to
11 make decisions that will involve giving up important rights
12 that you have. I need to make sure you're competent to make
13 those choices today.

14 Second, if you do want to go ahead with a guilty
15 plea, I want to make sure that you do it with your eyes open,
16 that you understand the rights you have and that you're giving
17 those rights up today, and that you understand the penalty
18 ranges that you open yourself to with a guilty plea. And I
19 need to make sure you do that, if that's where you go today,
20 only because you think it's best for you under the
21 circumstances and not because anybody is trying to pressure you
22 into this against your will.

23 And then finally, if we do get through those stages,
24 I'll only accept a plea of guilty from you if I'm also
25 satisfied based on what you tell me that there's a factual

1 basis to support the charge and, therefore, your guilty plea as
2 well. That is, to believe you are guilty of what the
3 government is charging you with. So those are the inquiries
4 that I have this morning.

5 I'm going to have questions for you. Your answers
6 will have to be under oath subject to penalty of perjury just
7 like any other witness in court here. And that's the way we'll
8 proceed.

9 Do you have any questions about that before we start?

10 *THE DEFENDANT:* No, Your Honor.

11 *THE COURT:* All right. We'll have you sworn, then,
12 to begin.

13 *THE CLERK:* Would you raise your right hand, please.

14 DERICK OLIN MCCONNON

15 *(The oath was administered)*

16 *THE DEFENDANT:* Yes, ma'am.

17 *THE COURT:* All right. Mr. McConnon, how old are
18 you?

19 *THE DEFENDANT:* Twenty-nine.

20 *THE COURT:* All right. And how far did you go in
21 school?

22 *THE DEFENDANT:* Some college.

23 *THE COURT:* Okay. And where did you graduate from
24 high school?

25 *THE DEFENDANT:* Caledonia. I got my GED.

1 *THE COURT:* Okay. Caledonia. When did you leave
2 high school? Or what grade?

3 *THE DEFENDANT:* Tenth grade.

4 *THE COURT:* Okay. And then you got your GED. And
5 where did you take college courses?

6 *THE DEFENDANT:* Grand Rapids Community College.

7 *THE COURT:* Okay. I can tell already from our
8 exchange you have no difficulty understanding or speaking
9 English. Any difficulty reading or writing the English
10 language?

11 *THE DEFENDANT:* No, sir.

12 *THE COURT:* All right. In a case like this -- let's
13 see, Mr. O'Hara, are you retained or appointed in this case?

14 *MR. O'HARA:* Appointed, Your Honor.

15 *THE COURT:* Mr. O'Hara has been appointed to be your
16 lawyer, paid for by the government. Has he been available to
17 you to talk to you about this case?

18 *THE DEFENDANT:* Yes, Your Honor.

19 *THE COURT:* Were you able to ask him all the
20 questions you had about this case?

21 *THE DEFENDANT:* Yes.

22 *THE COURT:* Did the two of you discuss your options
23 and different things you might do here in responding to the
24 government's charges?

25 *THE DEFENDANT:* Yes.

1 *THE COURT:* And do you feel like you need any more
2 time with Mr. O'Hara to talk about your position or your
3 choices?

4 *THE DEFENDANT:* No, Your Honor.

5 *THE COURT:* Do you feel ready to proceed today?

6 *THE DEFENDANT:* Yes.

7 *THE COURT:* Do you take prescription medication of
8 any kind?

9 *THE DEFENDANT:* No, sir.

10 *THE COURT:* Do you feel like you have any medical
11 condition or any mental health condition that should be treated
12 that is not being treated right now?

13 *THE DEFENDANT:* No.

14 *THE COURT:* Okay. Anything at all that's interfering
15 with your ability to think or reason or make choices today?

16 *THE DEFENDANT:* No, sir.

17 *THE COURT:* Mr. O'Hara, in your experience anything
18 that would lead you to doubt or question your client's
19 competence?

20 *MR. O'HARA:* No, Your Honor.

21 *THE COURT:* Mr. O'Connor, I know you're pinch hitting
22 today, but if you have any experience or reason to doubt, I'd
23 like to hear about it now.

24 *MR. O'CONNOR:* No, Your Honor.

25 *THE COURT:* I'm fully satisfied based on my

1 interactions with Mr. McConnon this morning that he's competent
2 to make these choices, he's alert, he's oriented, he's focused
3 on this time and place, and I see nothing at all interfering
4 with his ability to make judgments today and to make choices.
5 So we can go on and look at the Indictment, that is the set of
6 charges the government is making against you, Mr. McConnon.
7 And I really want to focus on Count 3 which is the conspiracy
8 charge, because that's the intended count for the change of
9 plea today. So I'll pass by Counts 1 and 2.

10 Count 3 charges you with conspiracy to distribute
11 cocaine. In the absence of a guilty plea to this charge, the
12 government would have to prove it at trial before you could be
13 convicted and subjected to the penalties that are associated
14 with it, and I want to make sure you understand what the
15 government would have to prove to a jury before there could be
16 a conviction on this charge.

17 Now, the essence of every conspiracy charge is an
18 agreement. And you already heard me address that general issue
19 with the lawyers before we started. So in order for there to
20 be a conviction on this charge, there would have to be proof by
21 the government of an agreement between you and at least one
22 other person. The agreement wouldn't have to be written down
23 or formal, it could be informal, but there would still have to
24 be an agreement.

25 The agreement here would have to be unlawful in some

1 way. That's the second element. And the government says the
2 agreement was unlawful because it involved the distribution of
3 cocaine and the agreement to possess with the intent to
4 distribute cocaine. So both elements are there.

5 And then finally the government would have to prove
6 quantity involved, and they'd have to prove here that your
7 agreement involved the anticipated distribution of at least
8 500 grams of cocaine.

9 And then lastly they'd have to show that you got into
10 this conspiracy or this illicit agreement knowing what you were
11 doing. You knew what the agreement was, yet you entered into
12 it knowing what it was and intending to pursue whatever the
13 common plan was for the distribution and possession with the
14 intent to distribute cocaine.

15 That's basically what the government would have to
16 show.

17 Do you have any questions at all about that?

18 *THE DEFENDANT:* No, Your Honor.

19 *THE COURT:* All right. Now, if you're convicted of
20 this offense, either because you go to jury trial, which is
21 your absolute right to do, and lose there, or because you go
22 ahead with a guilty plea today, either way there will be a
23 conviction and you'll be exposing yourself to potential
24 penalties as a result.

25 The penalties for conviction of Count 3 include

1 imprisonment, supervised release, and some economic penalties.
2 Imprisonment requires at least five years in prison. And the
3 maximum penalty range for a conviction here at these quantities
4 is 40 years. So the penalty range, first of all, is 5 to 40
5 years in prison.

6 Questions about that?

7 *THE DEFENDANT:* No, sir.

8 *THE COURT:* All right. Supervised release is also
9 mandated here of at least four years following imprisonment all
10 the way up to life on supervised release.

11 Any questions about that?

12 *THE DEFENDANT:* No, Your Honor.

13 *THE COURT:* Supervised release means in general
14 you're in the community, not in prison, but you have specific
15 restrictions on your conduct. So there will be things that you
16 have to do that other citizens don't have to do. There will be
17 things you're not allowed to do that other citizens are allowed
18 to do. And the importance of that supervised release period is
19 that during the period if you break those conditions of
20 release, you could be returned here, sent back to prison, not
21 because you commit a new crime but simply because you violate
22 those terms of release.

23 Do you understand that?

24 *THE DEFENDANT:* Yes.

25 *THE COURT:* Okay. The economic penalty ranges here

1 include a \$100 special assessment that the Court will simply
2 include in the judgment and then a fine of anywhere from zero
3 to up to \$2 million. So those are the economic penalties.

4 Questions about any of that?

5 *THE DEFENDANT:* No, Your Honor.

6 *THE COURT:* All right. Mr. O'Hara, does your client
7 have any issues regarding potential state parole or probation
8 revocations?

9 *MR. O'HARA:* No, Your Honor.

10 *THE COURT:* Okay. The penalty range is an important
11 place to begin. It's also important to understand the
12 practicalities of how the Court approaches sentencing in
13 federal court. So where within a range of 5 to 40 years in
14 this case is the appropriate sentence. And that begins a
15 discussion, or needs to begin anyway, with a discussion of
16 sentencing guidelines.

17 Have you and Mr. O'Hara talked about the Federal
18 Sentencing Guidelines?

19 *THE DEFENDANT:* Yes, sir.

20 *THE COURT:* Okay. Those guidelines are an effort to
21 promote some uniformity in sentencing. The way they work is to
22 have all of the conduct associated with a particular offense
23 reduced to one number called level of offense, and all of your
24 criminal history background, if there is any, reduced to
25 another number or a criminal history category, and where those

1 two numbers intersect on a chart you have something called the
2 guideline sentencing range in terms of months of imprisonment.

3 Have you and Mr. O'Hara looked through that together?

4 *THE DEFENDANT:* Yes, sir.

5 *THE COURT:* Okay. Now, where you are on that range
6 depends on a variety of circumstances. And have you and
7 Mr. O'Hara talked about the kinds of factors that would move
8 your sentencing range up on the guidelines and move it down on
9 the guidelines?

10 *THE DEFENDANT:* Yes, Your Honor.

11 *THE COURT:* Okay. Do you feel like you have an
12 understanding of how those factors play into your case?

13 *THE DEFENDANT:* Yes, sir.

14 *THE COURT:* Is there any prospect here of an
15 enhancement such as career offender enhancement coming into
16 play, or is that not in the cards here?

17 *MR. O'HARA:* No, Your Honor. There would be a
18 potential enhancement for a drug supplement had we gone to
19 trial --

20 *THE COURT:* All right.

21 *MR. O'HARA:* -- but not a career offender.

22 *THE COURT:* All right. Mr. McConnon, the other thing
23 I want to emphasize about the sentencing guidelines is that no
24 matter where they come out, ultimately they are advisory to the
25 Court, meaning that that's where the Court will begin the

1 sentencing process, but the Court is free to sentence you
2 within those guidelines, above the guidelines, or below the
3 guidelines as long as the Court honors that statutory range of
4 5 to 40 years.

5 Do you understand that?

6 *THE DEFENDANT:* Yes, Your Honor.

7 *THE COURT:* Okay. Has anybody tried to guarantee you
8 what sentence the Court would impose here on conviction?

9 *THE DEFENDANT:* No, sir.

10 *THE COURT:* You understand there isn't any guarantee
11 other than it will be between that statutory range or within
12 it, the 5 to 40 years?

13 *THE DEFENDANT:* Yes, sir.

14 *THE COURT:* Okay. Now, I mentioned earlier that I
15 want to make sure you're in the right frame of mind to make
16 choices today, because part of pleading guilty involves giving
17 up rights that you have, and I really want to turn to that for
18 a moment.

19 Right now in the eyes of the law you are entitled to
20 stand on the presumption of innocence. That means that in the
21 eyes of the law right now, like any other person accused of a
22 crime, you are innocent of the charges the government is making
23 against you, and you stay that way in the eyes of the law until
24 one of two things happens. Either you remove the presumption
25 yourself by pleading guilty today in a way that I accept, or

1 the only other way for the presumption to go away is to go to
2 trial and have the government prove its case to the jury's
3 satisfaction.

4 Now, if you go ahead with a guilty plea, we won't go
5 ahead with a jury trial. And so I want to detail for you the
6 rights that you have going down that jury trial road, because
7 those are the rights you'll be giving up.

8 Any questions about that before we go on?

9 *THE DEFENDANT:* No, sir.

10 *THE COURT:* All right. If you decide today to stick
11 with a plea of not guilty, and that is your absolute right --
12 even though you've signed a plea agreement, you can change your
13 mind, you don't have to go ahead with that today -- if you go
14 with the existing plea of not guilty, we'll convene here on
15 whatever trial date we have scheduled. I don't know when that
16 is, but I know it's on the calendar. We'll pick a jury of 12
17 people from the community, and those 12 people will hear and
18 decide your case.

19 At that trial only the government will have a burden
20 of proof. You will not. The government's burden will be to
21 prove to that jury beyond a reasonable doubt each and every
22 element of the crimes that it's charged you with, if it can do
23 so. Ultimately all 12 people on the jury will have to be
24 convinced that the government has carried its burden of proof
25 before you could be convicted and subjected to the penalties we

1 talked about.

2 Now, to carry that burden of proof beyond a
3 reasonable doubt the government would have to bring here into
4 court all of the witnesses it has against you. Those people
5 would have to testify in your presence where you would see them
6 and hear them, where your lawyer would have the chance to
7 cross-examine them, and most importantly where the jury would
8 see and hear the people and decide who to believe and how much
9 of what anybody says to believe or disbelieve.

10 Any other evidence the government has against you
11 would have to come here into open court where you would see it,
12 where the jury would see it and test it and decide whether to
13 credit the government with carrying its burden of proof or not.

14 You would not have a burden in that case. You could
15 come in and say nothing. You could be silent and say nothing
16 at all throughout the entire trial, and in that case it would
17 be your right to have me instruct the jury that it cannot in
18 any way use your silence against you in deciding whether the
19 government has carried its burden of proof. You wouldn't have
20 to remain silent. You could choose to put on an active
21 defense. You could even choose to testify on your own behalf.
22 You could use the power of this Court to compel the presence of
23 other witnesses, to compel the production of other evidence
24 here in court that you believe would help establish any defense
25 you have to these charges. All of those rights regarding the

1 trial you'd be giving up if you go ahead with a guilty plea
2 today.

3 You understand that?

4 *THE DEFENDANT:* Yes, sir.

5 *THE COURT:* Okay. One right you won't give up today
6 no matter what you decide is your right to counsel. Mr. O'Hara
7 has been appointed for you, and he'll stay with you in the
8 trial court regardless of what you do. So if you decide you
9 want to go to trial, you won't go alone, you'll go with
10 Mr. O'Hara as your counsel, he'll be there throughout the trial
11 helping you make the decisions you have to make and generally
12 representing your interests.

13 On the other hand, if you plead guilty today, there
14 will be a conviction based on your plea of guilty today
15 followed by a sentencing hearing sometime next year, and
16 Mr. O'Hara will be with you throughout that process. So you'll
17 stay with him as long as you're in the trial court.

18 Do you understand that?

19 *THE DEFENDANT:* Yes, sir.

20 *THE COURT:* Okay.

21 Any questions at all about the rights you have at
22 this point and the rights you'd be giving up in this process?

23 *THE DEFENDANT:* No, Your Honor.

24 *THE COURT:* Let me cover one more thing that I think
25 is important to touch on, because in the process of pleading

1 guilty, in addition to these rights you're giving up, you also
2 give up the rights you would otherwise have to challenge the
3 investigative tactics of the government. So if you think, for
4 example, that the government has violated your rights in the
5 way it has conducted searches in the case or if you think the
6 government has violated your rights in the way it's questioned
7 you, those kinds of defenses would have to be raised before a
8 plea today or they are waived. Once you plead guilty they are
9 gone, you can't bring them up again later. You can't bring
10 them up in the Court of Appeals. You can't bring them up here.

11 Do you understand that?

12 *THE DEFENDANT:* Yes, Your Honor.

13 *THE COURT:* Okay. Let me look with you at the
14 Plea Agreement. I mentioned that a moment ago, and I did see a
15 Plea Agreement filed in the case.

16 Do you have a copy of that in front of you?

17 *THE DEFENDANT:* Yes, sir.

18 *THE COURT:* All right. The copy I have, turning to
19 page 11, appears to have your signature near the top,
20 "Derick McConnon," dated December 16, 2009.

21 Is that your signature there?

22 *THE DEFENDANT:* Yes, sir.

23 *THE COURT:* And did you sign that on December 16?

24 *THE DEFENDANT:* Yes.

25 *THE COURT:* Before you signed did you read those

1 sentences above your name that begin "I've read this agreement
2 and carefully discussed every part of it with my attorney"?

3 *THE DEFENDANT:* Yes, Your Honor.

4 *THE COURT:* And were all those sentences true when
5 you signed on December 16?

6 *THE DEFENDANT:* Yes.

7 *THE COURT:* Any second thoughts in the last roughly
8 week?

9 *THE DEFENDANT:* No, Your Honor.

10 *THE COURT:* Do you still want to go ahead with this?

11 *THE DEFENDANT:* Yes, sir.

12 *THE COURT:* Okay. Let me go to the beginning of the
13 agreement with you and walk through the basic provisions. Much
14 of this we've covered, but there will be some new items.

15 Paragraph 1 says you're going to plead guilty to
16 Count 3 of the Indictment, which we've looked at.

17 And paragraph 2 says you understand what the elements
18 of that charge are. And I think we've covered that.

19 Paragraph 3 details the penalty ranges that apply
20 upon conviction.

21 Questions about any of those paragraphs?

22 *THE DEFENDANT:* No, sir.

23 *THE COURT:* I want to pass by paragraph 4 for a
24 moment. We'll come back to that on factual basis.

25 Paragraph 5 is new, and it says that as part of this

1 plea agreement you are agreeing to cooperate with law
2 enforcement. And the basic idea of paragraph 5 is that you're
3 going to tell law enforcement what you know about possible
4 criminal wrongdoing that you've been a part of or that you've
5 seen other people be a part of and generally assist in their
6 efforts to enforce the law.

7 Your cooperation could include grand jury appearances
8 where you'd testify to a grand jury considering whether to
9 bring charges against other people. It could include
10 testifying in a trial proceeding against somebody who is
11 exercising their right to go to trial on charges the government
12 has already brought. And it could even include submitting to a
13 lie-detector test if the government thinks that that's
14 warranted in the case.

15 The basic idea of paragraph 5 is you're going to
16 cooperate with law enforcement.

17 Questions about that?

18 *THE DEFENDANT:* No, Your Honor.

19 *THE COURT:* Paragraph 6 is connected here, and it
20 says if you fully cooperate, as you promised to do in
21 paragraph 5, that's one thing, and if the government believes
22 in good faith that your cooperation has provided actual
23 substantial assistance, that's the second thing, and both have
24 to be true for paragraph 6 to come into play, but if both are
25 true, the government may then come to this Court with a motion

1 asking the Court to impose a lower sentence than the Court
2 would otherwise impose to give you credit or recognition for
3 the substantial assistance you actually provide.

4 Questions about paragraph 6?

5 *THE DEFENDANT:* No, Your Honor.

6 *THE COURT:* You understand that the government's not
7 promising it will file that motion here, only that it will
8 evaluate your cooperation and decide in good faith if it
9 actually and substantially assists the government; that's what
10 they are committing to do.

11 You recognize that?

12 *THE DEFENDANT:* Yes, sir.

13 *THE COURT:* Okay. Now, if they do reach that
14 conclusion and file the motion, do you also recognize that it's
15 still up to the Court ultimately whether to grant the motion,
16 and if so how much credit to give you for that assistance?

17 *THE DEFENDANT:* Yes, Your Honor.

18 *THE COURT:* All right. Let's go to paragraph 7 which
19 is a series of promises the government is making to you as part
20 of the plea agreement here.

21 The first one is that at the time of sentencing the
22 government will move to dismiss the two other counts in the
23 Indictment we didn't look at and will not bring further charges
24 that arise out of the conspiracy that's charged in Count 3.

25 Questions about that?

1 *THE DEFENDANT:* No, sir.

2 *THE COURT:* All right. The next one your counsel has
3 already alluded to, and it says the government will not file a
4 supplemental information in the case which would have the
5 effect of essentially doubling your penalty exposure on the
6 mandatory minimum side. So if the government would go ahead
7 and file a supplemental information that you have a prior
8 drug -- felony drug conviction that qualifies, your penalty
9 range would go up. You've talked to Mr. O'Hara about that?

10 *THE DEFENDANT:* Yes, Your Honor.

11 *THE COURT:* Okay. And you recognize that one of the
12 benefits the government is giving you here is their promise not
13 to do that so that the penalty range that applies is the one we
14 talked about, minimum five years to maximum 40?

15 *THE DEFENDANT:* Yes, sir.

16 *THE COURT:* Okay. The next one says the government
17 will not use what you tell the government in your proffer
18 sessions as part of your cooperation, it will not use that
19 information against you to make the sentencing exposure worse
20 than it would otherwise be. Meaning the government wants to
21 have you with full incentive to tell them everything you know
22 about possible criminal wrongdoing, not fearing that they will
23 then turn around and seek a higher sentence for you because
24 they didn't know about all the stuff you're telling them.

25 Do you recognize how that works, and do you have any

1 questions about it?

2 *THE DEFENDANT:* No, sir.

3 *THE COURT:* No questions?

4 *THE DEFENDANT:* No questions. I recognize how it
5 works.

6 *THE COURT:* Paragraph D is a sentencing guideline
7 issue, and it says that the government will not stand in the
8 way of your ability and your effort to get the maximum possible
9 benefit you can receive under the sentencing guidelines for
10 timely acceptance of responsibility here. In your case that
11 would likely be three points of credit reducing your level of
12 offense.

13 Questions about that?

14 *THE DEFENDANT:* No, Your Honor.

15 *THE COURT:* All right. And then the last one says
16 that the government is not going to bring charges against a
17 person, Candice May Vogl, for alleged roles in this conspiracy
18 they have charged you with provided that she provides full and
19 truthful cooperation in the investigation of anything that she
20 was involved in from a criminal point of view.

21 Questions about that?

22 *THE DEFENDANT:* No, sir.

23 *THE COURT:* All right. Now, is Candice Vogl
24 connected to you in some way?

25 *THE DEFENDANT:* Yes, my fiancée, Your Honor.

1 *THE COURT:* Okay. And you recognize that this is one
2 of those things where the government is making a commitment to
3 you, but ultimately there's something in the hands of
4 Candice Vogl, namely, she has to provide that full and truthful
5 cooperation, and if she doesn't, the government may still
6 choose to charge her.

7 Do you recognize that?

8 *THE DEFENDANT:* Yes, Your Honor.

9 *THE COURT:* And you can't control how she behaves in
10 the process.

11 *THE DEFENDANT:* No, Your Honor.

12 *THE COURT:* Okay. All right. Paragraph 8 indicates
13 the sentencing guidelines apply here and describes how they
14 work in a general way. I think we've talked about that.

15 Do you have any questions about that?

16 *THE DEFENDANT:* No, sir.

17 *THE COURT:* All right. Paragraph 9 indicates that
18 there's no agreement about the final guideline range. That is,
19 the government isn't agreeing with you and your counsel that
20 any particular guideline range is applying here. They have
21 simply agreed with you on a couple of factors that will begin
22 the process, but the final guideline range is going to be open
23 for argument at sentencing.

24 Do you understand that?

25 *THE DEFENDANT:* Yes, sir.

1 *THE COURT:* Okay. Paragraph 10 lists constitutional
2 rights that you're waiving in the process of pleading guilty,
3 and I think we've covered all those.

4 Any questions about that?

5 *THE DEFENDANT:* No, sir.

6 *THE COURT:* Paragraph 11 is new. It's a waiver of
7 appeal and collateral attack, and it says as part of the
8 exchange of benefits here from you to the government and the
9 government to you, you're going to waive appeal and collateral
10 attack rights that you would otherwise have. So I want to go
11 through this.

12 I think basically you need to think of this paragraph
13 as waiving the appeal rights and collateral attack rights you
14 would otherwise have, that is having to live with the judgment
15 of this Court with only a couple of exceptions that I'm going
16 to point out. Okay? Questions about that general statement
17 first before we look at the exceptions?

18 *THE DEFENDANT:* No, Your Honor.

19 *THE COURT:* Okay. The first exception is that the
20 sentence of the Court ultimately has to be within or below the
21 guideline range or the statutory mandatory minimum, whichever
22 is greater, for this waiver to trigger.

23 So in other words, if the Court sentences you above
24 the statutory mandatory minimum or whatever the guideline range
25 is, if it's higher than that, then you still have the right to

1 appeal. So let's take an example. Let's say that the
2 guideline range here turns out to be 72 to 84 months, purely
3 hypothetical, I have no idea if that's even a guideline range.
4 You have the statutory mandatory minimum of 60 months; you have
5 a guideline range of 72 to 84 months. So my reading of this is
6 if the Court sentences you in that case above 84 months, the
7 high end of the guideline range, you'd still have your right to
8 appeal and collateral attack. If I sentence you anywhere below
9 84 months or 84 months or below, you don't have a right to
10 appeal or attack that judgment.

11 Questions about that?

12 *THE DEFENDANT:* No, Your Honor.

13 *THE COURT:* Okay. Counsel, you agree that's the
14 intended reading of the first exception or the first trigger?

15 *MR. O'CONNOR:* Yes, Your Honor.

16 *MR. O'HARA:* It is, Your Honor.

17 *THE COURT:* Okay. The only other exception here
18 noted is that if you and your lawyer object at the time of
19 sentencing to preserve an objection to the way the Court is
20 calculating the guidelines, you have a right to appeal that.
21 So, for example, using that same hypothetical, if Mr. O'Hara
22 says, Judge, I think your guideline calculation is wrong, it's
23 not really 72 to 84 months, it's really, you know, 48 to
24 60 months because you've credited too much quantity to my
25 client and you've given him a role in the offense that's too

1 high, any other -- oh, and you've treated him as having a
2 weapon when he didn't. Okay, now he's just made three
3 objections. I overrule those objections; you have a chance to
4 appeal them. Okay? So that's an opportunity you have to bring
5 to the Court of Appeals as well.

6 Questions about how that works?

7 *THE DEFENDANT:* No, Your Honor.

8 *THE COURT:* Okay. Other than those two examples,
9 though, those two triggers or exceptions, you're walking away
10 from your right to appeal or attack the judgment of the Court.

11 Questions about that?

12 *THE DEFENDANT:* No, sir.

13 *THE COURT:* All right. Paragraph 12 indicates that
14 the Court is not a party to this agreement, meaning that you've
15 signed it, your lawyer signed it, I saw that earlier, and then
16 Mr. Courtade signed it on behalf of the United States
17 Attorney's Office. The Court doesn't sign it. I'll review it
18 for reasonableness and decide whether to accept it at the time
19 of sentencing, but I'm not bound by it. Rather I'm bound to
20 make my own independent judgment about whether it's an
21 appropriate resolution of the case, first of all, and if so
22 what the appropriate sentence is for the count of conviction.

23 Questions about that?

24 *THE DEFENDANT:* No, Your Honor.

25 *THE COURT:* All right. Paragraph 13 says the

1 agreement is limited to the parties. The added point here is
2 that Mr. Courtade and today Mr. O'Connor represent only one
3 office of the federal government, namely, the United States
4 Attorney's Office for the Western District of Michigan. That
5 office has a geographical range: Anything in the
6 Lower Peninsula of Michigan that's west of a line from the
7 bridge to the border and the Upper Peninsula of Michigan.
8 That's where the Western District of Michigan's office
9 operates. So anything within that range in the federal
10 government's jurisdiction is covered here. But anything out of
11 that is not. So if you have a dispute with the United States
12 Attorney in Detroit, the Eastern District of Michigan, that's
13 not covered here. With a United States attorney in
14 Indianapolis, not covered here. With the Internal Revenue
15 Service in DC, not covered here. It's just the United States
16 Attorney's Office for the Western District of Michigan.

17 Questions about that?

18 *THE DEFENDANT:* No, sir.

19 *THE COURT:* All right. Paragraph 14 says what
20 happens if there's a breach of this agreement. And it's
21 important to recognize the consequences of that. Let's say you
22 decide not to go ahead with a guilty plea today, and the first
23 thing I want you to hear again is that is your absolute right.
24 You do not have to go ahead and plead guilty today even though
25 you signed this agreement. But if you don't, it will breach

1 your promise. It will be something other than what you
2 committed to do, and the consequences of that would be the
3 agreement would dissolve. It would go away. You would be
4 exposed to all three of the charges in the original indictment
5 as well as any other charges the government could bring against
6 you within the one-year period that's brought there or noted
7 there in the paragraph, and any other benefits you're getting
8 under the agreement would be gone. So the government could
9 file that supplemental information tomorrow.

10 The government could pursue charges against the other
11 person. The government would not be bound to give you any
12 consideration on the sentencing guideline issues that it's
13 promised, and you would be back in the position you were in
14 before you signed the agreement, headed to trial on those
15 charges.

16 Questions about any of that?

17 *THE DEFENDANT:* No, Your Honor.

18 *THE COURT:* Okay. The last paragraph here says this
19 is the complete agreement, meaning anything between you and the
20 government that's motivating a decision to plead guilty on your
21 part is written down here in this Plea Agreement that we've
22 just gone through.

23 Questions about that?

24 *THE DEFENDANT:* No, Your Honor.

25 *THE COURT:* Has anybody from the government made any

1 promises or commitments to you other than what we've gone
2 through in this Plea Agreement to get you to plead guilty?

3 *THE DEFENDANT:* No, sir.

4 *THE COURT:* Has anybody at all made promises or
5 commitments to you to get you to plead guilty that we haven't
6 talked about?

7 *THE DEFENDANT:* No, sir.

8 *THE COURT:* Anybody putting pressure on you or
9 threatening you or coercing you in any way to get you to do
10 this against your will?

11 *THE DEFENDANT:* No, Your Honor.

12 *THE COURT:* Is this something you want to proceed
13 with based only on your own considered judgment?

14 *THE DEFENDANT:* Yes, sir.

15 *THE COURT:* Okay. Mr. O'Hara, anything else you'd
16 like to address or have me address with the client, your client
17 at this point?

18 *MR. O'HARA:* No, Your Honor.

19 *THE COURT:* Mr. O'Connor, anything else?

20 *MR. O'CONNOR:* No, Your Honor.

21 *THE COURT:* All right. Then my question for you,
22 Mr. McConnon, is how you plead today to Count 3 of this
23 Indictment, conspiracy to distribute cocaine, guilty or not
24 guilty?

25 *THE DEFENDANT:* Guilty, Your Honor.

1 *THE COURT:* And that is a decision you make of your
2 own free will today?

3 *THE DEFENDANT:* Yes, sir.

4 *THE COURT:* You recognize if I accept it, you're
5 going to be giving up all those rights we talked about,
6 including the right to stand on the presumption of innocence,
7 the right to insist on a jury trial. All those things that go
8 along with it.

9 You recognize that?

10 *THE DEFENDANT:* Yes, Your Honor.

11 *THE COURT:* You recognize if I accept this, I'm
12 simply going to -- well, you will be convicted as of my
13 acceptance today, subject only then to the penalty phase of
14 this case.

15 Do you understand that?

16 *THE DEFENDANT:* Yes, sir.

17 *THE COURT:* Okay. Nobody is pressuring you to do
18 this against your will?

19 *THE DEFENDANT:* No, Your Honor.

20 *THE COURT:* And you recognize that if you have any
21 claim that the government has prosecuted this case unfairly or
22 any claim that the police investigated it unfairly or
23 unconstitutionally, those claims are waived, you can't come
24 back to those later?

25 *THE DEFENDANT:* Yes, sir.

1 *THE COURT:* Okay. I'm satisfied that Mr. McConnon is
2 making a knowing and intelligent waiver of his rights to
3 proceed here. I believe he understands the risks he's taking
4 on, and I believe he's deciding to do this based only on what
5 he believes is best for him under the circumstances after
6 conferring with counsel.

7 I don't believe anybody is forcing him to do this
8 against his will, and I don't believe he's relying on anything
9 apart from the promises that are a part of the written
10 Plea Agreement with the government.

11 And so what that leaves for me is just one other set
12 of questions, Mr. McConnon, and that is to determine if there's
13 a factual basis to support the plea here. And to begin that,
14 I'd like to turn back to the Plea Agreement in paragraph 4
15 which has a heading called "Stipulations" and then goes on for
16 several paragraphs about what happened in particular on
17 March 16, 2009, at the location mentioned there in
18 Gaines Township.

19 Have you read through everything in paragraph 4
20 carefully?

21 *THE DEFENDANT:* Yes, Your Honor.

22 *THE COURT:* And is everything recited there in
23 paragraph 4 true to the best of your knowledge, information,
24 and belief?

25 *THE DEFENDANT:* Yes, Your Honor.

1 *THE COURT:* And you recognize that -- well, going
2 through and reading all of these out loud, by saying what you
3 just did, you're allowing me to rely on all of the factual
4 statements in there in determining a factual basis and in
5 beginning to think about what the appropriate sentence is?

6 *THE DEFENDANT:* Yes, Your Honor.

7 *THE COURT:* Okay. I'd like to hear a little bit more
8 in your own words, Mr. McConnon. You can certainly refer to
9 these stipulations and use them if you want, but what I want to
10 understand, in your own mind what makes you guilty of Count 3?
11 What facts support the idea that there was a conspiracy in
12 which you were involved to distribute cocaine in the quantities
13 mentioned? Just talk to me about that in your own words.

14 *THE DEFENDANT:* Well, Your Honor, from January to
15 March 16th I picked up cocaine from 36th Street in Byron Center
16 from a guy named G and his girlfriend Trina, and I distributed
17 it through the Kentwood area.

18 On March 16th my house was searched and two ounces of
19 cocaine were found, and at that point I admitted to the agents
20 where I had been getting it from and that I had been
21 distributing cocaine through the Kentwood and Grand Rapids
22 area.

23 *THE COURT:* Okay. So we're talking about January to
24 March of 2009?

25 *THE DEFENDANT:* Yes, sir.

1 *THE COURT:* Okay. Now, you said you would get your
2 cocaine at 36th and Byron Road or was it Byron Center?

3 *THE DEFENDANT:* Byron Center, sir.

4 *THE COURT:* Okay. From a person named G. Was that
5 somebody you had a regular association and understanding with
6 about supplying cocaine?

7 *THE DEFENDANT:* Yes, Your Honor.

8 *THE COURT:* Okay. And what was it? I mean, how
9 would you characterize it in your mind? What was your
10 understanding with G?

11 *THE DEFENDANT:* Just that I would purchase the
12 cocaine from him and then sell it through -- sell it to other
13 individuals.

14 *THE COURT:* Okay. Once you bought it from G, was it
15 yours to do with what you wanted, or did you and he have an
16 understanding about how you would split the proceeds?

17 *THE DEFENDANT:* Um, basically I'd just give him the
18 money for half of it or if I owed him money on it. We didn't
19 really split, split the money. He just had a certain amount.
20 It was \$900 per ounce that I paid for it.

21 *THE COURT:* Okay. Did he front you some of it, or
22 did you have to pay cash for delivery?

23 *THE DEFENDANT:* He fronted it to me.

24 *THE COURT:* So he would front some to you?

25 *THE DEFENDANT:* Yes, Your Honor.

1 *THE COURT:* Okay. And then obviously he expected you
2 to go out and sell it to make the money to pay it off.

3 *THE DEFENDANT:* Yes, Your Honor.

4 *THE COURT:* Okay. And when you got the cocaine from
5 him, that was your plan as well, to go sell that cocaine?

6 *THE DEFENDANT:* Yes, Your Honor.

7 *THE COURT:* Okay. Now, are you satisfied in your own
8 mind -- let me ask it this way: Is there any question in your
9 mind that your understanding with G involved at least 500 grams
10 of cocaine?

11 *THE DEFENDANT:* Yes, Your Honor.

12 *THE COURT:* Okay. I think I confused you because of
13 the way I questioned it.

14 Did your understanding with G involve at least
15 500 grams of cocaine in your mind?

16 *THE DEFENDANT:* Yes, Your Honor.

17 *THE COURT:* No question about that in your mind?

18 *THE DEFENDANT:* No.

19 *THE COURT:* Okay. Did you have other sources of
20 supply too or was G your source?

21 *THE DEFENDANT:* G was my source.

22 *THE COURT:* Okay. All right. Mr. O'Connor, anything
23 else you'd like to probe on factual basis?

24 *MR. O'CONNOR:* No, Your Honor.

25 *THE COURT:* You're satisfied there is one here?

1 MR. O'CONNOR: I am, Your Honor.

2 THE COURT: Mr. O'Hara, anything else on factual
3 basis?

4 MR. O'HARA: No, Your Honor.

5 THE COURT: You're satisfied as well?

6 MR. O'HARA: I am.

7 THE COURT: I am too. I think based on what
8 Mr. McConnon has indicated as well as the stipulations in the
9 Plea Agreement there is a factual basis to support the charge
10 and the guilty plea here of conspiracy to distribute cocaine in
11 the quantities indicated and the time and place indicated, and
12 so with that and the earlier findings of the Court, I will
13 accept your plea of guilty, Mr. McConnon, to Count 3, and it
14 means that as of this moment you're adjudicated guilty of that
15 count. There won't be a trial on it or on the other two counts
16 of the Indictment. Instead we'll schedule a sentencing date,
17 there will be a hearing on that date, and before we get there a
18 representative of the probation department will prepare a
19 written presentence report. The report will go into greater
20 detail about the underlying offense. It will go into detail
21 regarding your criminal history past and prepare a guideline
22 report and recommendation for me.

23 And before it comes to me, it will go through you and
24 your lawyer, and you'll both have a chance to review it
25 carefully, to make any objections to it that you think are

1 necessary, to make corrections or additions to it. The
2 document will come to me then either as a report that everybody
3 agrees is accurate that I can use for purposes of sentencing or
4 as one that has specific objections framed that I'll then
5 decide at the time of sentencing.

6 Questions at all about that process?

7 *THE DEFENDANT:* No, sir.

8 *THE COURT:* All right. Before we leave paragraph 4
9 completely, the last paragraph embedded there deals with a
10 couple of sentencing guideline issues that will be the
11 beginning of the process.

12 The first one is the quantity because that's a
13 beginning factor in the sentencing guideline range in a drug
14 offense like this, and it says the parties are agreeing the
15 relevant conduct for purposes of assessing that guideline issue
16 is at least 500 grams but less than two kilograms of cocaine.
17 So both the government and you are agreeing with that range as
18 a starting point.

19 Questions about that?

20 *THE DEFENDANT:* No, Your Honor.

21 *THE COURT:* Okay. Now, the probation department will
22 do its own investigation. They might agree or disagree with
23 that range, but the government's commitment as part of this
24 plea agreement is that the range will be within that 500-gram
25 to two-kilogram range of cocaine, and the Court will ultimately

1 decide if there's an issue.

2 Questions about that?

3 *THE DEFENDANT:* No, sir.

4 *THE COURT:* Okay. The other is that the government
5 and you are agreeing that a firearm was not in your possession
6 in furtherance of this offense.

7 And third, that you were not a leader, supervisor, or
8 manager of others in this offense.

9 Questions about either of those?

10 *THE DEFENDANT:* No, Your Honor.

11 *THE COURT:* Okay. Now, you recognize each one of
12 those three things we just talked about -- quantity,
13 leadership, and weapons -- are guideline sentencing factors?

14 *THE DEFENDANT:* Yes, sir.

15 *THE COURT:* Okay. Do we have a sentencing date,
16 Ms. Ludge?

17 *THE CLERK:* We do. March 31, 2010, at 3 p.m.

18 *THE COURT:* All right. So that will be our
19 sentencing hearing date. Between now and then the report will
20 be investigated and prepared, and then we'll get back to this
21 court on March 31.

22 Questions at all, Mr. McConnon, about where you stand
23 or what's left to do in this case?

24 *THE DEFENDANT:* No, Your Honor.

25 *THE COURT:* Okay. Mr. O'Hara, anything else from the

1 defense?

2 MR. O'HARA: No, Your Honor.

3 THE COURT: Mr. O'Connor?

4 MR. O'CONNOR: No, Your Honor.

5 THE COURT: Okay. Thank you.

6 THE CLERK: All rise, please. Court is adjourned.

7 *(Proceeding concluded at 11:50 a.m.)*

8 * * * * *

9 I certify that the foregoing is a correct transcript
10 from the record of proceedings in the above-entitled matter.
11

12 Date: May 11, 2010
13

14 **/s/ Glenda Trexler**

15 Glenda Trexler, CSR-1436, RPR, CRR
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